

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 2135 (Schiavo)
Version: June 13, 2024
Hearing Date: June 25, 2024
Fiscal: Yes
Urgency: No
AM

SUBJECT

Public works contracts: wage and penalty assessment

DIGEST

This bill extends the deadline from 18 months to 24 months, as specified, for the Labor Commissioner to serve a civil wage and penalty assessment against a public work contractor or subcontractor, or both. The bill authorizes the deadline for service of an assessment to be extended for an additional 18 months upon a showing of good cause by the Labor Commissioner or their designee, and specifies that a showing of good cause includes that the investigation and assessment is ongoing.

EXECUTIVE SUMMARY

In 2000, AB 1646 (Committee on Labor and Employment, Ch. 954, Stats. 2000) established the authority of the Labor Commissioner to assess a civil wage and penalty against a contractor or subcontractor who fails to pay the prevailing wage. This bill would extend the statute of limitations for the Labor Commissioner to serve a civil wage and penalty assessment against a public work contractor or subcontractor, or both, from 18 months to 24 months. This bill is author sponsored and supported by several labor organizations, including the California State Association of Electrical Workers and California State Pipe Trades Council. The bill is opposed by the American Subcontractors Association of California, the Construction Employers' Association, and the Western Electrical Contractors Association Inc. This bill passed the Senate Committee on Labor, Public Employment and Retirement on a vote of 4 to 0.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the Division of Labor Standards Enforcement, within the Department of Industrial Relations, under the direction of the Labor Commissioner. Provides

various, powers, rights, and duties to the Labor Commissioner to enforce the labor laws. (Lab. Code § 79-107.¹)

- 2) Requires the Labor Commissioner to, with reasonable promptness, issue a civil wage and penalty assessment to the contractor or subcontractor, or both, if the Labor Commissioner or their designee determines after an investigation that there has been a violation of public works laws. (§ 1741(a).)
- 3) Requires the assessment to be served no later than 18 months after the filing of a valid notice of completion in the office of the county recorder in each county in which the public work or some part thereof was performed, or no later than 18 months after acceptance of the public work, whichever occurs last. (§ 1741(a).)
- 4) Requires the assessment to be in writing, and include the nature of the violation and the amount of wages, penalties, and forfeitures due, and shall include the basis for the assessment. The assessment shall also advise the contractor and subcontractor of the procedure for obtaining review. (§ 1741(a).)
- 5) Provides that interest accrues on all due and unpaid wages, from the date the wages were due and payable until the wages are paid, as specified. (§ 1741(b).)

This bill:

- 1) Extends the time that an assessment must be served by the Labor Commissioner to 24 months.
- 2) Authorizes the deadline for service of an assessment to be extended for an additional 18 months upon a showing of good cause by the Labor Commissioner or their designee, and specifies that a showing of good cause includes that the investigation and assessment is ongoing.

COMMENTS

1. Stated need for the bill

The author writes:

Wage theft is a historically difficult labor violation to address. Workers must overcome a lot to fight for the wages they are owed, such as fears of retaliation, difficulties finding documentation, and confidence engaging with bureaucracy, to name a few. In the case of complaints submitted to the Labor Commissioner, all of a worker's efforts can be in vain if the Commissioner's office cannot issue an

¹ All further references are to the Labor Code unless specified otherwise.

assessment for any reason within the allotted time. This stacks the system against a worker, and for employees who have been wronged, staffing shortages or any other emergency which would delay the Labor Commissioner's Office can be the difference of a worker receiving pay they're owed or not. AB 2135 helps ensure that workers are paid the wages they are rightly owed by giving the Labor Commissioner's office more time to complete their investigation.

2. Wage Theft

Senate Committee on Labor, Public Employment and Retirement analysis of this bill provides background on the problem of wage theft:

Wage theft is a persistent issue across California industries. Every year, tens of thousands of workers lose millions of dollars in stolen wages. Despite having some of the strongest labor protections in the nation, California often struggles with enforcement. Even public works projects, with their extensive wage and reporting requirements, are not immune to wage theft. A 2024 audit of the LCO, found that due to an inefficient wage claim process, the LCO often takes two years or longer to resolve the wage claims it receives². Additionally, the LCO is severely understaffed, contributing to a rapidly growing backlog of cases.

For public works violations, this bill would increase the time period the LC has to issue a civil wage and penalty assessment from 18 months to 24 months, with the option to extend the deadline by another 18 months if an investigation is ongoing. This means the LC has 730 days from the completion of a public works project to take action, or about two years. This aligns with the current length of time it takes the LCO to resolve individual wage theft claims.³

3. This bill extends the statute of limitations for the Labor Commissioner to serve a civil wage and penalty assessment against a public work contractor or subcontractor, or both to 24 months.

The author states that this bill is brought due to reports from constituents that their complaints were closed due to the statute of limitations running out despite being in consistent contact with the Labor Commissioner's Office. The author further states that a Labor Management Compliance Council did an internal review of complaints it submitted to the Labor Commissioner over the past few years and found that nearly a quarter of cases closed in each year reviewed were closed due to reaching the statute of limitations. In order to address this issue, the author seeks to extend the existing statute

² "The California Labor Commissioner's Office: Inadequate Staffing and Poor Oversight Have Weakened Protections for Workers." California State Auditor, May 2024, <https://www.auditor.ca.gov/wp-content/uploads/2024/05/2023-104-Report.pdf>

³ Sen. Comm. on Lab., Pub. Empl. and Retirement analysis of AB 2135 (2023-24 reg. sess.) as amended May 20, 2024.

of limitations to 24 months, and additionally authorizes the deadline to be extended for an additional 18 months upon a showing of good cause by the Labor Commissioner or their designee. Under the bill, a showing of good cause includes that the investigation and assessment is ongoing.

4. Statements in support

The California Labor Federation writes in support stating:

Wage theft is a pervasive, yet historically difficult labor violation to address, and it disproportionately impacts workers who live paycheck to paycheck. In order to address their wage theft, workers must overcome the fear of retaliation, navigate the difficulties of finding documentation, and have the time and capacity to submit a complaint. In the case of complaints submitted to the Labor Commissioner, a worker's efforts can be in vain if the Commissioner's office cannot issue an assessment for any reason within 18 months after the filing of a notice of completion with the county. This stacks the system against a worker because any obstacle including staffing shortages, or any other emergency which may cause delays, can be the difference between a worker receiving the pay they are owed or not.

AB 2135 simply extends this 18-month timeline and allows an investigation to be extended beyond for good cause, which includes ongoing investigations. This bill will provide additional time for the Commissioner to provide assessments, as well as address the negative impact of cases being closed solely because the Commissioner is unable to complete an investigation in time.

5. Statements in opposition

The American Subcontractors Association of California and the Western Electrical Contractors Association Inc. write in opposition, stating that the approach the bill takes to address the problem identified will have unintended negative consequences for workers. They write:

We recognize the importance of ensuring the timely payment of workers in the construction industry and penalizing employers who violate the law. However, ASAC and WECA regrettably disagree with the approach taken in AB 2135. Instead of incentivizing the LC to complete timely investigations or provide additional resources, this bill could delay the resolution of claims. Further, while we appreciate the intent to ensure that a party's claims are not unfairly dismissed, we remain concerned about allowing up to 42 months to investigate.

Unfortunately, we also believe the timeframe proposed in AB 2135 could have unintended negative impacts on medium and small contractors and subcontractors, including minority-owned and Disabled Veteran Business Enterprises (DVBE).

Specifically, we are concerned this could drive up the cost of bonding and limit the supply of sureties willing to write such business. This will hurt contractors and subcontractors, as bonding requirements can currently be a barrier to entry for small businesses on public works projects.

SUPPORT

California Labor Federation
California Legislative Conference of Plumbing, Heating and Piping Industry
California State Association of Electrical Workers
California State Pipe Trades Council
United Association of Plumbers and Pipefitters Local 761
Western States Council Sheet Metal, Air, Rail and Transportation

OPPOSITION

American Subcontractors Association of California
Construction Employers' Association
Western Electrical Contractors Association Inc.

RELATED LEGISLATION

Pending Legislation: AB 2705 (Ortega, 2024) aligns the statute of limitations the Labor Commissioner has to enforce the liability on a public works payment bond with the statute of limitations to issue civil wage and penalty assessments. AB 2705 is currently pending in the Senate Committee on Labor, Public Employment and Retirement.

Prior Legislation:

AB 1336 (Frazier, Ch. 792, Stats. 2013), among other things, extended the deadline from 180 days to 18 months, as specified, for the Labor Commissioner to serve a civil wage and penalty assessment against a public work contractor or subcontractor, or both.

SB 569 (Steinberg, 2007), among other things, extended the statute of limitations to serve a civil wage and penalty assessment against a public work contractor or subcontractor to four years from the date of the violation. SB 569 was held in the Assembly Appropriations Committee.

AB 581 (Klehs, 2005) would have, among other things, extended the statute of limitations to serve a civil wage and penalty assessment against a public work contractor or subcontractor to four years from the date of the violation. AB 581 was held in the Senate Appropriations Committee.

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AB 1646 (Committee on Labor and Employment, Ch. 954, Stats. 2000) *see* Executive Summary.

PRIOR VOTES

Senate Committee on Labor, Public Employment and Retirement (Ayes 4, Noes 0)

Assembly Floor (Ayes 56, Noes 4)

Assembly Appropriations Committee (Ayes 11, Noes 3)

Assembly Labor and Employment Committee (Ayes 5, Noes 0)
